

Charles Ross, D.D.S., Chairman
Florida Board of Dentistry

August 6, 2001

The Honorable Frank Farkas, D.C.
Chairman, Health Regulation Committee
402 South Monroe Street
1101, The Capitol
Tallahassee, FL 32399-1300

Subject: 2001-2002 Interim Study on Privatization of Health Practitioner Regulation
Questionnaire for the Board of Dentistry

Dear Chairman Farkas:

On Wednesday, July 25, the Board of Dentistry staff received the attached questionnaire from your committee. The accompanying instructions from committee staff advised that the answers must be provided no later than August 3. Because the Board already had a conference call scheduled for Monday, July 30, the questionnaire was mailed and faxed to members and added as an agenda item for the conference call meeting. Unfortunately, some of our members either did not receive the questionnaire, or received it without enough time to provide meaningful input into the formulation of answers. Nevertheless, in an effort to be responsive, the Board voted to delegate to the chair and two members the task of formulating a response. Each member transmitted comments independently to our Board counsel, who combined the responses and drafted this letter. The Board will have the opportunity to provide a supplemental response after its August 17 meeting if necessary.

The Board of Dentistry has unanimously supported implementation of privatization of its functions in an effort to improve the fulfillment of its legislative mandate. The two biggest reasons which have driven the Board in this direction are the lack of meaningful input over budgetary decisions and problems in the prosecution of cases.

The Board believes that the cost of regulating the profession are excessive for a number of reasons. Having dual bureaucracies (AHCA and DOH) generates additional costs in having multiple layers of attorneys and staff reviewing and approving stipulations. In addition, the Board has been assessed significant technology costs attributable to the PRAES system and the CORESTAT system, with no input into the implementation decisions. The reports generated by the Department's Inspector General as well as the Auditor General support the budgetary concerns the Board has had for many years, particularly the fact that the Board had been kept in the dark about financial and budgetary matters, that some of the information previously provided was inaccurate and incomplete, and that there was faulty budgeting and allocation of funds.

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The Board has experienced problems with the manner in which AHCA has prosecuted cases on its behalf. The high staff turnover in prosecution (the Board has been assigned 6 different prosecutors in the last 5 years) increases costs several ways. Prosecution of dentistry cases presents challenges to any new prosecutor in that the subject matter is highly technical and requires a significant learning curve. New prosecutors are bound to make some mistakes along the way as they learn the ropes. It seems that shortly after some of the better prosecutors have learned, they have moved on. Furthermore, the lack of continuity hampers effective prosecution in that the new attorney inherits a significant caseload of ongoing cases in all stages of litigation, some of which have hidden timebombs that explode on the new prosecutor.

The prosecution of disciplinary cases is significantly watered down as cases go through the system. Decisions are oftentimes made based on clerical rather than clinical judgment. The terms negotiated on many stipulations are deemed inadequate by the Board, and are not reflective of the recommendations made by the probable cause panel. On a few occasions, and in an effort to sell the Board on a stipulation, or the probable cause panel on a recommendation for closure, prosecutors have made statements on the record which tend to taint the case. The probable cause panel sometimes confronts cases which would justify an emergency suspension order, but because of delays in presentation of the case, during which time the licensee has continued to practice for a significant period of time, the justification for claiming an immediate threat to the public health safety and welfare has been effectively waived.

In leveling these criticisms at the prosecution of cases by AHCA, the Board would be remiss if it did not acknowledge that the system creates many of the problems. Prosecutors are assigned unmanageable caseloads. The management appears much more interested in artificial numbers and deadlines than in prosecuting difficult cases. It appears that the prosecutor who can close the most cases is preferred over the one that takes longer to litigate cases. The Board would be much more satisfied if some of the resources used to pay for the dual bureaucracy and the technological advances was directed toward hiring (and retaining) more prosecutors.

The Board also has concerns about control of its examination. The Board is particularly displeased about not being able to provide its exam at Nova University, thereby making Nova the only university in the nation which does not offer its students this privilege. The Board firmly believes that decisions concerning examination and licensure of professionals should be driven more by professional considerations as opposed to bureaucratic ones.

The present system diffuses authority (and accountability) among two agencies. The Department contracts with AHCA for prosecution services, but in effect is forced to write them a blank check. Department officials have indicated that the services are paid when billed without monitoring to confirm that the costs submitted are correct, and without performance indicators to determine the quality of service.

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In closing, the Board wishes to assure you and the Committee of its desire and willingness to work toward the goal of effective and efficient regulation to safeguard the safety and welfare of the public. Please let us know how we may assist you in this endeavor.

Sincerely,

Charles Ross, D.D.S.
Chairman, Board of Dentistry

cc: Sue Foster, Executive Director